NG WAN CHAN

v.

MAJLIS UGAMA ISLAM WILAYAH PERSEKUTUAN & ANOR.

HIGH COURT MALAYA, KUALA LUMPUR
EUSOFF CHIN J
[CIVIL SUIT NO. R1-22-4-91]
26 JUNE 1991

STATUTORY INTERPRETATION: *Whether deceased was a Muslim - Proof of conversion - Rank of person who converted deceased not stated - Meaning of "forthwith", "pegawai mesjid" and "pegawai majlis" - Non-compliance with statutory requirements - Adherence to tenets of faith - Sufficient evidence - Register of Converts - Conduct of deceased during lifetime - Conclusive proof - Administration of Muslim Law Enactment 1952, ss. 2, 146, 148 - Administration of Muslim Law Rules 1953 (Selangor), r. 10 - Government Proceedings Ordinance 1956, s. 29(1)(a).*

The plaintiff who was the widow of the deceased L sought firstly, a declaration that L was a Buddhist during his lifetime and at the time of his death and secondly, an injunction restraining the 1st defendant, the Majlis Ugama Islam of the Wilayah Persekutuan, D1, from taking or claiming possession of L's remains or interfering with the delivery of L's remains to her.

D1 alleged that L had converted to Islam in 1973 and produced an application form for conversion to Islam dated 24 December 1973 which was submitted by L (the said form).

The main issues for the determination of the Court were:

(a) whether L, who was a Buddhist, was properly converted to Islam in 1973;

(b) whether L at the time of his death, was or was not professing the Muslim religion and

(c) if he had been properly converted to Islam, whether he had renounced the religion of Islam before he died.

Held:

[1] Where a prescribed Form is used for the purpose of conversion to Islam, it is necessary that evidence must be produced to the Court stating that the person solemnising the conversion is a pegawai.

[2] There was no evidence that the person who is alleged to have solemnised the conversion, as stated in the Form, was a pegawai mesjid or pegawai majlis as required by r. 10 of the Administration of Muslim Law Rules 1953, Selangor.

[3] There has been a failure to comply with the words "forthwith" in s. 148 of the Administration of Muslim Law Enactment 1952 (the Enactment) as the report of the conversion was only forwarded to D1 nearly 2 months after the conversion; "forthwith" means "without any delay or loss of time".

[4] There was no evidence that L had complied with the requirements of a valid conversion to Islam, namely, that the two clauses of affirmation of faith in Arabic had been made by a person who understands the meaning of these clauses and that he made it of his own free will. Therefore, the Court could not rule that the conversion to Islam of L had been carried out in accordance with Islamic law.

[5] There is no provision in any written law which allows the Court to accept the Register of Converts or the Mufti's certificate as conclusive proof of the facts stated therein or as sufficient proof of any conversion.

[6] The activities of L during his lifetime clearly show that they did not conform to conduct that may reasonably be expected from a person who professes and practises the Muslim religion.

[7] As L was not a Muslim when he died, the question of his having renounced Islam does not arise; assuming that he had converted to Islam, there is also no evidence before the Court that, even if the activities of L tended to show that he was not a Muslim, he repented the fact that he renounced his religion.

[8] Under s. 29(1)(a) of the Government Proceedings Ordinance 1956, an injunction cannot be granted against D2 as he was an agent of the Government; however, the Court declared L a Buddhist during his lifetime and at his death and ordered that the plaintiff was entitled to his remains.

[Plaintiff's application for declaration and injunction against D1 granted.]

Cases referred to:
Nam Bee Rubber Estate Sdn. Bhd. v. Syarikat Tanaman Perak Bhd. [1986] 1 MLJ 29
Razack v. Aga Mahamad Jaffer Bindaneem [1894] LR 21 IA 56

Legislation referred to:
Administration of Muslim Law Enactment 1952 (Selangor), ss. 2, 114, 144, 146, 147, 148
Administration of Islamic Law Enactment 1989 (Selangor), ss. 68(1), 73, 74
Administration of the Muslim Law Rules 1953 (Selangor), r. 10
Government Proceedings Ordinance 1956, s. 29(1)(a)

Other source referred to:
Manusia dan Islam, p. 306

For the plaintiff - Karpal Singh (Oh Choong Ghee with him); M/s. Karpal Singh & Co.
For the 1st defendant - Pawancheek Merican; M/s. Ariff & Co.
For the 2nd defendant - Jalaluddin, SFC

[Editors note: The defendants have appealed to the Supreme Court.]

JUDGMENT

Eusoff Chin J:

The main issues to be determined by this Court are:

(i) whether the deceased, who was a Buddhist, was properly converted to Islam in 1973;

(ii) whether the deceased, Lee Siew Kee at the time of his death, was or was not professing the Muslim religion;

(iii) if he had been properly converted to Islam, whether he had renounced the religion of Islam before he died.

The Majlis Agama Islam Wilayah Persekutuan, Kuala Lumpur (1st defendant) (hereinafter referred to as Majlis) alleged that the deceased was a Muslim at the time of his death. The Majlis produced a certified copy of an application form entitled "Borang Permohonan Memeluk Ugama Islam" submitted by the deceased, dated 24 December 1973. The deceased was then 37 years old.

At the lower portion of this Form appears the following:

Untuk Digunakan Oleh Pegawai Yang Mengislamkan

1. Syarat-syarat memeluk ugama Islam, nasihat berkenaan dengan Islam serta doa diberi oleh: Hj. Muhammad Adam K.C. Chao
2. Di Islamkan oleh: Hj. Muhammad Adam K.C. Chao
3. Saksi-saksi: (1) Hj. Ibrahim Yap K/P No: 2652269 t.t.
   (2) Hj. Hashim Chin K/P. No: 2983398 t.t.
4. Nama Islam: Redza Lee
5. Tarikh diislamkan: ...

T.T.
Pangkat Pegawai Yang Mengislamkan

Encik Karpal Singh for the plaintiff submitted that there was no date showing when this Islamisation took place, or where this ceremony was performed. It is noted that "Pangkat Orang Yang Mengislamkan" at the last line in the Borang, is also not stated. Encik Karpal Singh submitted that s. 146 of the Administration of the Muslim Law Enactment 1952 (the Enactment) applicable at the time of conversion states:

> 146. No person shall be converted to the Muslim religion otherwise than **in accordance with** the provisions of this Enactment or any rules made thereunder.

Section 148 of the Enactment states:

> 148. Any Muslim who converts any person to the Muslim religion shall **forthwith** report such conversion to the majlis with all necessary particulars.

The only rule relating to conversion to Islam is r. 10 of the Administration of Muslim Law Rules 1953, (Selangor) and it states:

> 10. All "pegawai mesjid" shall keep a record of the particulars of all conversions to Islam in their respective "kariah" and shall forward such particulars to the Majlis for registration as soon as the formalities of such conversions are completed.
>
> 'Pegawai mesjid' has been defined under s. 2 of the Enactment to mean: "the nazir, imam, khatib, and bilal of a mosque, if any, for the time being" and 'kariah' and 'kariah mesjid' mean "the area prescribed by the Majlis in accordance with s. 114 of this Enactment within which a mosque is situated."

It would therefore appear that when the Borang is used for the purpose of conversion, the "pangkat pegawai yang mengislamkan" refers to a "pegawai mesjid" or an official of the Majlis.

From the application form submitted by the deceased, I find that the conversion ceremony has to be done by a 'pegawai' - see the portion of the form quoted above. But the affidavits of Dato' Mohd. Aini b. Taib and Haji Arifin b. Haron for the Majlis do not disclose whether Hj. Muhamad Adam K.C. Chao was in fact a 'pegawai' at the time he was alleged to have converted the deceased to Islam. Since r. 10 refers to 'pegawai mesjid' there must be evidence to show that the person who solemnised the conversion must be either a pegawai mesjid or a pegawai Majlis authorised to perform that function. It is true that it appears from s. 147 of the Enactment that any Muslim may solemnise the conversion of any person to Islam, but where a prescribed form is used for that purpose, as is here shown, it is necessary that the evidence must be produced to the Court stating that the person solemnising the conversion is a 'pegawai'.

It is also the requirement of s. 148 of the Enactment that a Muslim who converts a person to Islam shall forthwith report such conversion to the majlis, with all the necessary particulars. 'Forthwith' has been held by the Supreme Court to mean 'without any delay or loss of time' - see *Nam Bee Rubber Estate Sdn. Bhd. v. Syarikat Tanaman Perak Bhd.* [1986] 1 MLJ 29 at 34. Although the conversion is alleged to have taken place on 24 December 1973, contrary to the provision of s. 148 of the Enactment, the report was received nearly 2 months later by the Majlis on 2 February 1974. There has been a failure to comply with s. 148 of the Enactment.

Under Islamic law, the following requirements must be complied with for a valid conversion of a person to Islam:

(a) the person must utter in reasonably **intelligible Arabic** the two clauses of the affirmation of faith (*kalimah syahadad*);

(b) at the time of uttering the two clauses of the affirmation of faith the person must be aware that they mean "I bear witness that there is no God but Allah and I bear witness that the Prophet Muhammad is the messenger of Allah"; and

(c) the utterance must be made at the person's own free will.

These three requirements have been made into statutory law by s. 68(1) of the Administration of Islamic Law Selangor No. 2 of 1989 (which **has not yet** come into force though passed by the Selangor State Assembly and assented to by the DYMM Sultan of Selangor). I agree that when it comes into force this new law does not apply to Wilayah Persekutuan unless Parliament passes an Act to adopt and apply it to Wilayah Persekutuan, or passes similar law. It is referred here to stress the fact that the State Legislature of Selangor in its wisdom had seen it fit, (most probably to dispel any doubt or avoid further argument) to incorporate into s. 68(1) the requirements of a valid conversion.

For the Majlis to successfully oppose this application, the Majlis must produce evidence to show that the conversion of the deceased to Islam had been done in accordance with the requirements of Islamic law. The Majlis must prove the fact that the process or rite of conversion had been properly performed. In other words, there must be evidence before me to show that the requirements as stated in (a), (b) and (c) above had been complied with by the deceased. This evidence can be produced by either Hj. Muhammad Adam K.C. Chao who converted the deceased, or one of the two persons who witnessed the conversion, or by any person who was present at the time the deceased was purported to have been converted to Islam. Such evidence has not been placed before me, and in the absence of such evidence, it is difficult for me to rule, (as I am not satisfied) that the conversion to Islam of the deceased, had been done or completed in accordance with Islamic law. I also note that the **new** Administration of Islamic Law No. 2/89 (Selangor) contains a provision in s. 73 to the effect that the Registrar of Muallaf **must not** register the conversion of a convert in his Register of Muallaf unless he is satisfied that the process and rite of conversion had been fulfilled. He is also required to determine the date of conversion.

The production of the Register of Converts or the Mufti's certificate by the Majlis is not sufficient proof of any conversion having occurred, unless there is provision in any written law to allow me to accept the Register as conclusive proof of the facts stated therein. The existing Administration of Muslim Law Enactment applicable to Wilayah Persekutuan Kuala Lumpur does not contain such provision, although I note that such a provision has been inserted as s. 74 of the new Administration of Islamic Law 1989, No. 2/89 (Selangor).

On the grounds stated, I make a finding that there is no proper evidence before me to prove that the deceased had been properly converted to Islam on 24 December 1973.

The conduct of the deceased after his alleged conversion is relevant, and need to be considered by this Court.

I agree with Encik Karpal Singh that the person who really and best knew the deceased well during his life time, is his widow, the plaintiff. According to the affidavits affirmed by the plaintiff, she married the deceased in 1970 and lived with him till his death on 2 May 1991, as Buddhist. She was not aware of his purported conversion to Islam in 1973. She said that he was never circumcised. According to the plaintiff, the deceased attended and performed Buddhist religious activities and festivals. He was a committee member (or towkay) of 'Nam Hai Goddess of Mercy Temple", and had he not died, he would have been on that committee until 26 October 1991. He ate non-halal food including pork cooked by his wife. Although it is alleged that he had taken the Muslim name of Redza Lee, he never made any change of his name in his identity card, passport, bank accounts, pension cheques, (he retired from Government service on option) and other documents. After his purported conversion to Islam, he had two children, and their birth certificates contained only the Chinese name of the deceased as the father. When he submitted particulars of his children when entering them into schools, he had put their religions as 'Buddhists'. All the related documents were produced to the Court by the plaintiff. When his mother died in July 1981, the deceased performed religious rites and rituals associated with the funeral and burial which only a Buddhist could participate in. Photographs of the deceased performing these rituals have been produced to the Court.

For the Majlis, two office colleagues of the deceased affirmed affidavits to say that they were informed by the deceased that he had converted to Islam in 1973. According to them the deceased used to mix a lot with other Malay and Muslim staff at his office. The day after the deceased died, one of the deponents of the affidavits, Zainal bin Samad had gone to the Perkim office and together with a Perkim officer went to the funeral parlour to claim the deceased's body, but was unsuccessful.

The learned Professor Dr. Haron Din and his learned colleagues in their book *Manusia dan Islam*, at p. 306 stated that a Muslim may renounce his religion by oral declaration or by his conduct amounting to such renunciation.

In *Razack v. Aga Mahamad Jaffer Bindaneem* [1894] LR 21 IA 56, the Privy Council held that in determining whether the marriage of an alleged female convert with a Muslim is valid, the question of conversion must be decided not by an enquiry into the mind of the convert, but by an enquiry into the conformity of her acts to the conduct that may reasonably be expected from a person of her alleged religion.

My finding is that the activities of the deceased during his life time, clearly show that they did not conform to the conduct that may reasonably be expected from a person who professes and practises the Muslim religion. The fact that the deceased had mixed a lot with his Malay and Muslim friends in his office is not sufficient to prove he was a Muslim, because in this country, people of various races and religions do mix freely and closely among themselves.

When delivering this oral judgment in open Court, I had indicated to the parties that in the event of an appeal to the Supreme Court, I reserved the right to elaborate or add to this judgment which (since an appeal has been filed to the Supreme Court) I now do. It concerns the issue of '*murtad*' and '*taubat*'.

'*Murtad*' means a Muslim who renounces his religion (Islam) either by clearly declaring that he is no longer a Muslim or by his conduct which clearly shows that he is not a Muslim. In their book *Manusia dan Islam* the authors learned in the religion of Islam, at p. 306, quoting a passage from the Quran (Al-Baqarah 218) and another from Riwayat Kebanyakan Ahli Sunah, stated that in Islam the punishment on a Muslim convicted for an offence of *murtad* is death. However, if he is proven to have been a *murtad* because of his lack of understanding of the true ways of Islam, and having received proper instructions, he repents (or *taubat*), he is deemed to have returned to the religion of Islam and would not suffer the death penalty.

It is, therefore, necessary for the respondent No. 1 to produce evidence to this Court to the effect that (assuming that the deceased had been properly converted to Islam) even if the activities of the deceased would tend to show that he was not a Muslim, he had *taubat* before he died. There is no such evidence before this Court.

Therefore on the issues stated at the beginning of this judgment, my findings are, on the evidence:

(i) the deceased had not been properly converted to Islam in 1973;

(ii) the deceased was not a Muslim when he died;

(iii) since he was not a Muslim the question of his having renounced his religion (Islam) does not arise.

For the reasons given I allow the application of the plaintiff as prayed in paras. (1) and (3) of her application, which are:

(1) a declaration that Lee Siew Kee, deceased was a Buddhist during his lifetime and at the time of his death on 2 May 1991;

(3) an injunction restraining the 1st defendant from taking or claiming possession of the remains of the deceased or in anyway whatsoever interfering with the delivery to the plaintiff or her possession of the said remains.

As to the prayer contained in para. 2 of her application, the second defendant who is the Director of General Hospital, Kuala Lumpur, is an agent of the Government, and clearly no injunction can be made against him as it is prohibited by s. 29(1)(a) of the Government Proceedings Ordinance 1956. In lieu of the injunction prayed for, I make the order declaring that the deceased was a Buddhist at the time of his death on 2 May 1991, and that his widow, the plaintiff is entitled to the remains of the deceased.

As regards the claim for damages Encik Karpal Singh in the course of his submission informed me that although the plaintiff and her family are suffering a traumatic experience, she is only interested in getting the remains of the deceased for burial. I therefore make no order on the prayer for damages.

I order costs to be paid by the defendants to the plaintiff.

Also found at [1991] 2 CLJ 1559